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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

No. 603.

RENE BARDY,
Appellant,

vs.

UNITED STATES OF AMERICA
and MCA INC.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

BRIEF OF APPELLANT OPPOSING MOTION TO DISMISS.

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The consent order below,[1] though boldly professing to protect third parties, which includes the appellant, Rene Bardy, did not spell out the effective machinery giving the professed protection, but was a hollow shell

"Nothing herein shall impair the rights, if any, of third parties"

[1] Order dated July 23, 1962, certified as pages 93 to 105, inclusive, of the record on appeal.

The Government states that creditors of MCA Artists, Ltd., are protected.[2]

MCA Inc. states that creditors of MCA Artists, Ltd., are protected.[3]

Appellant, a creditor, cannot find that protection upon the face of the order.[4]

If the order had spelled out what the appellees now assert it states, the appellant, Rene Bardy, would not have sought intervention.

De facto liquidation does not depend upon formal dissolution. The ways to dissipate corporate assets are too numerous to mention.

MCA Inc. has sacrificed its wholly-owned subsidiary, MCA Artists, Ltd., as part of its bargaining power to settle the antitrust litigation brought by the United States Government. Innocent third parties should not be sacrificed to aid MCA Inc. to dispose of its antitrust action.

Jeopardy to the creditors of MCA Artists, Ltd., provokes a substantial Federal question. This appeal is not frivolous. Appellant, Rene Bardy, is entitled to be heard upon the merits.

The motion to dismiss should be denied.

Respectfully submitted,

MORTON R. GALANE
Attorney for Appellant

2. Page 6, Motion to dismiss filed by the United States.
3. Page 10, Motion to dismiss filed by MCA Inc.
4. Final consent judgment entered October 18, 1962, certified [illegible] to 23, inclusive, of the supplemental record on appeal.